

REMARKS

Status of the Claims

Claims 1-7, 9-13 are presently pending in this application.

Double Patenting

The Office Action objected to claim 10 based on 37 CFR 1.75 as being a substantial duplicate of Claim 8. By the present amendment, Applicants have cancelled claim 8. As a result of this amendment, Applicants respectfully request that the Examiner withdraw the objection to claim 10.

Claim rejections under 35 U.S.C. § 102

The Office Action rejects claims 1, 3, and 5 as being anticipated by Endo et al. (Japanese Patent No. 2003310339).

A rejection under 35 U.S.C. § 102(a) can be overcome by antedating the filing date of the reference by submitting an affidavit or declaration under 37 CFR 1.131. MPEP 2132.01. Applicants respectfully note that § 102(e) does not apply to the Endo application because, *inter alia*, the Endo application did not designate the United States. 35 U.S.C. § 102(e). Applicants submit the attached declaration of Gary Koenemann establishing invention of the subject matter of the rejected claims in the United States prior to November 4, 2003, the publication date of the Endo reference.

Based on the submission of the attached declaration, the Applicants respectfully request that the rejection of claims 1, 3, and 5 under 35 U.S.C. § 102(a) be withdrawn.

Claim rejections under 35 U.S.C. § 103

The Office Action rejects claims 1, 2, and 4-10 as being unpatentable over Doyle (U.S. Patent No. 4,520,256) in view of Nakagawa et al. (U.S. Patent Pub. No. 2002/0189128).

With respect to Claim 1, neither the Doyle reference nor the Nakagawa reference discloses “conduction of heat from a heated surface to the hair of a user.” The Nakagawa reference describes a “hairdryer.” In particular it describes a device that expels hot air for the purpose of drying hair. This however describes a form of convection, and not the device described in the present application. The Doyle reference describes a “hot air curler.” It, like the Doyle reference, operates based on the expulsion of hot air. Neither device alone or in combination conducts heat from a heated surface to the hair of a user” as described in Claim 1. For the above reasons, the Applicants respectively request that the Examiner withdraw the § 103 rejection based on Doyle in light of Nakagawa with respect to Claim 1 because the combination of references lacks a claimed feature.

Claims 2 and 4 depend on Claim 1, and for the reasons stated above with respect to Claim 1, Applicants respectively request that the Examiner withdraw the § 103 rejection based on Doyle in light of Nakagawa. Because the combination of Doyle and Nakagawa lacks a feature of independent claim 1, it necessarily lacks a feature of dependent claims 2 and 4 as well.

With respect to Claim 5, Claim 5 has been amended to remove the reference to “a curling iron.” Neither the Doyle reference nor the Nakagawa reference discloses the claimed invention comprising, inter alia, a flat straightener and an ion generator. Neither reference alone or in combination contains this structural limitation as described in Claim 5. For the above reasons, the Applicants respectively request that the Examiner withdraw the § 103 rejection based on Doyle in light of Nakagawa with respect to Claim 5 as amended because the combination lacks a claimed feature.

Claim 6 depends on Claim 5 and for the reasons stated above with respect to Claim 5, Applicants respectively request that the Examiner withdraw the § 103 rejection based on Doyle

in light of Nakagawa. Because the combination of Doyle and Nakagawa lacks a feature of independent claim 5, it necessarily lacks a feature of dependent claim 6 as well.

With respect to Claim 7, neither the Doyle reference nor the Nakagawa reference discloses “a heater contained in the barrel for heating the barrel during use.” Both the Nakagawa reference and the Doyle reference contain heaters not contained within the barrel. Neither device alone or in combination contains this structural limitation as described in Claim 7. For the above reasons, the Applicants respectively request that the Examiner withdraw the § 103 rejection based on Doyle in light of Nakagawa with respect to Claim 7 because the combination lacks a claimed feature.

Claim 9 depends on Claim 7, and for the reasons stated above with respect to Claim 7, Applicants respectively request that the Examiner withdraw the § 103 rejection based on Doyle in light of Nakagawa. Because the combination of Doyle and Nakagawa lacks a feature of independent claim 7, it necessarily lacks a feature of dependent claim 9 as well.

With respect to Claim 10, neither the Doyle reference nor the Nakagawa reference discloses “a heater contained in the barrel for heating the barrel during use.” Both the Nakagawa reference and the Doyle reference contain heaters not contained within the barrel. Neither device alone or in combination contains this structural limitation as described in Claim 10. For the above reasons, the Applicants respectively request that the Examiner withdraw the § 103 rejection based on Doyle in light of Nakagawa with respect to Claim 10 because the combination lacks a claimed feature.

The Office Action rejects claims 1, 3-6, and 11-13 as being unpatentable over Yuen et al. (U.S. Patent Pub. No. 2005/0076930) in view of Nakagawa et al. (U.S. Patent Pub. No. 2002/0189128).

A rejection under 35 U.S.C. § 103(a) can be overcome by antedating either reference as available prior art under 35 U.S.C. § 102. MPEP 2141.01. Yuen was published after the filing date of this application, therefore it is not part of the prior art under 35 U.S.C. § 102(a) or (b). A prior art rejection based on 35 U.S.C. § 102(e) can be overcome by submitting an affidavit or declaration under 37 CFR 1.131. MPEP 2136.05. Applicants submit the attached declaration of Gary Koenemann establishing invention of the subject matter of the rejected claims in the United States prior to the filing date of the Yuen reference. Therefore, the Yuen reference cannot form the basis of a rejection under 35 U.S.C. § 103(a). MPEP 2141.01.

Based on the submission of the attached declaration, the Applicants respectfully request that the rejection of the claims under 35 U.S.C. § 103(a) be withdrawn.

SUMMARY OF RESPONSE

It is believed that in light of the remarks and amendment above, the application is in condition for allowance. Accordingly, reconsideration and favorable action in this case are respectfully requested. If the Examiner believes that a telephone conference would expedite the prosecution of the case, the Examiner is invited to call the undersigned at the number below.

Respectfully submitted,

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